

ELECTION AND REMARKS

In the present application, claims 1-61 are now pending. In the above Action, Examiner Prebilic first made a restriction requirement between two groups of claims, which were characterized as follows:

- I. Claims 1-29 and 45-61, drawn to the graft, classified in class 623, subclass 1.3.
- II. Claims 30-44, drawn to the method of implantation, classified in class 623, subclass 1.23

The basis for this restriction is allegedly that the inventions are distinct and have acquired a separate status in the art for examination purposes. Second, Examiner Prebilic further made a species requirement between two species sets, which were characterized as follows:

Species Set 1

- A. Figure 3
- B. Figure 4
- C. Figure 5
- D. Figure 6

Species Set 2

- X. Figure 8
- Y. Figure 9 and 10

The basis for requiring this species election is also one of distinctiveness along with the allegation that currently, no generic claims are present in the application.

In response, as these requirements rely on 35 U.S.C. §121 which makes the same permissive under the practices noted in MPEP §803 and 808.02 the Applicant initially traverses these requirements and requests that the application be examined as a whole if it can be done without undue burden on the Examiner. In this regard, it is pointed out that the prosecution of the parent U.S. Patent Application, Serial No. 09/704,083, now U.S. Patent No. 6,585,762, was carried out by Examiner Prebilic without any similar restriction or species election being required.

In any case, without an admission of any sort by the Applicant as to the subject matter or classification of any claim, but pursuant to his obligation, the Applicant hereby elects group I (claims 1-29 and 45-61) for prosecution in this application, with traverse on the ground that it is

Response to Restriction Requirement
USSN 10/608,799
Group Art Unit 3738
Attorney Docket No. 37031-23

believed that searching and examining the entire application can be done without serious burden under the circumstances. Also consistent with his obligation, the Applicant elects Figure 3 from Species Set 1 and Figures 9 and 10 in Species Set 2 for prosecution herein, once again with traverse. Still further, while the Applicant reserves the right to claim the genericness or applicability of other specific pending or added claims later in the prosecution as may be appropriate, it is submitted that the majority of the elected claims under the current restriction requirement are readable on these species elected as well, those claims including, without limitation, at least elected claims 1-10, 16-29, 45-56, and 58-61.

In hereby responding to this Office Action, the Applicant has not amended any claim and does not intend to limit the scope of any pending or later-offered claims in this prosecution. The pending elected claims are intended to have their full scope, including equivalents to which their language entitles them. The remarks made herein are not intended to be exhaustive of any basis for reconsideration, but are made simply to effectively and efficiently respond to the pending restriction and species election requirements. The Applicant reserves the right to offer and establish other grounds for reconsideration of the matters discussed herein as may be appropriate, and further respectfully submits that such requirements should be withdrawn and all claims now pending should be examined pursuant to MPEP §803, 808.02, and 809.02.

In conclusion, the Applicant has provisionally elected claims 1-29 and 45-61 herein and further Figure 3 and Figures 9 and 10 in Species Sets 1 and 2, respectfully, both with traverse, in response to the requirements in the outstanding Action. Accordingly, it is respectfully requested that Examiner Prebilic reconsider and withdraw the same and, in any event, that prosecution of this application should proceed and that the claims as elected are believed to be in condition for allowance at this time.

Respectfully submitted,

By



Charles R. Reeves, No. 28,750
Woodard, Emhardt, Moriarty, McNett & Henry LLP
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137
(317) 634-3456

Response to Restriction Requirement
USSN 10/608,799
Group Art Unit 3738
Attorney Docket No. 37031-23